

**Initial Overview and Documents Related to Development of a Proposed
Department of Energy Consolidated Transportation Grant
(Background Information Provided at the Philadelphia TEC Meeting, July 1999)**

Summary

This paper outlines the activities of the staff Working Group established at the direction of the Department of Energy (DOE) Senior Executive Transportation Forum (the Forum) to conduct preliminary analyses and report back to the Forum on issues related to developing and administering a proposed DOE consolidated transportation grant to States and Tribes impacted by DOE shipments. Extensive consultation with States and Tribes is planned on all of the preliminary analyses prepared for the Forum.

Objective of the Proposed Transportation Grant

The purpose of developing a consolidated transportation grant is to achieve consistency, accountability, efficiency, and coordination of DOE transportation program operations related to States and Tribes. The expected outcomes include increased administrative efficiency, improved pre-shipment planning and coordination for all DOE shipping campaigns, enhanced awareness and preparedness by all jurisdictions impacted by DOE shipments, and increased fairness in the allocation of DOE funding assistance to impacted jurisdictions, reducing political pressure on DOE that results in inconsistent and inequitable distribution of funds.

Background

Annual reports prepared by the DOE National Transportation Program (NTP) show that, in Fiscal Year 1997, DOE programs provided over \$4 million to States and Tribes (excluding Agreement-in-Principle grants) to support transportation and emergency planning for DOE radioactive material shipments. These funds are provided by individual DOE programs through two basic types of mechanism: direct funding to Tribes, and funding to States, either directly or through regional government associations. Each of these mechanisms has separate reporting requirements, levels of funding, and points of contact. The result has been an inconsistent, inequitable and even a sometimes indefensible funding approach, particularly for corridor States and Tribes.

State and Tribal members of the Transportation External Coordination Working Group (TEC/WG), working through a series of "topic group" conference calls and meetings during 1997 and 1998, examined the advantages and disadvantages of a variety of DOE funding options to replace the current system. The TEC/WG concurred with the findings of this study, referring it to the Forum in July 1998, with a recommendation that DOE consider developing a consolidated transportation grant, in conjunction with continued support to regional groups of States and Tribes to facilitate their early transportation planning and coordination activities.

In December 1998, the Forum established a DOE Working Group to examine the issues involved and the feasibility of developing a consolidated grant for transportation planning. The DOE Working Group was directed to report back in late Spring, when the Forum would make a decision on whether to proceed further.

Schedule of Activities to Date

- ◆ Fall, 1998: Initial Forum discussions.
- ◆ December, 1998: Establishment of a DOE Working Group.
- ◆ January 28 and March 29, 1999: DOE Working Group all-day meetings in Washington D.C.
- ◆ January-May, 1999: DOE Working Group conference calls and individual discussions with DOE program managers, DOE Tribal Points of Contact, Tribal organizations, State officials and regional government association staff, and contacts from other Federal agencies that provide financial assistance to States and Tribes.
- ◆ June, 1999: DOE Working Group presentation of proposed approach to the Forum.
- ◆ July, 1999: TEC/WG review of options, features, schedule and implementation strategy.

Proposed DOE Consolidated Transportation Grant: Possible Options Considered

The proposed transportation grant would consolidate the individual DOE program funding streams that currently provide transportation financial assistance to States and Tribes. Three possible approaches initially identified and proposed to the Forum were discussed by the DOE Working Group. In the course of their discussions, group members identified and recommended a fourth option. All four options are listed below:

- ◆ No-action Option: Continue current funding approach.
- ◆ Internally restructure and pool current DOE resources.
- ◆ Request a line item appropriation or Congressional authorization to establish a consolidated DOE transportation grant in Fiscal Year 2001.
- ◆ Request a Secretarial/Comptroller decision to implement a target transfer of funds budgeted by DOE Programs for transportation planning into a single B&R code to support a consolidated transportation grant, beginning in Fiscal Year 2001.

The specific pros and cons of each option are listed in the Decision Paper provided to the Forum. Some more general reasons also informed the discussion of the options. For example, selection of Option #1 would maintain the status quo, resulting in continued inequitable and indefensible allocation of funds. This could prove to be more problematic as more DOE programs begin to ship through corridors that, to date, have not seen many DOE shipments. In general, also, DOE's experience suggests that Option #2, alone, is unlikely to be effective: while there has been recent progress in developing closer coordination among DOE programs, funding to States and Tribes has been dependent on informal agreements among individual agency officials. During the past several years various programs have begun to see the efficacy of leveraging the limited dollars that each program has to accomplish its transportation mission. These efforts, however, continue to be affected by political "fire-drill" decisions and the perceived

need to “maintain schedule” leads to separate negotiated agreements with respective States and Tribes. In addition, a small number of Tribal and State stakeholders have expressed concerns about this option: (1) existing transportation funding could be taken away and (2) use of a process like the existing Agreements-in-Principle mechanism could result in funding levels being subject to individual Field Office priorities for non-transportation programs that are more closely aligned to their primary mission.

Options #3 and #4 are similar in demonstrating consistency with the combined grant currently being developed by the Environmental Protection Agency (EPA). Specifically, EPA is proposing to coordinate 17 different environmental program funding streams, involving an annual transfer of approximately \$800 million to States and Tribes. Options #3 and #4 also offer the advantage of a formal mechanism similar to programs of other agencies that support State and Tribal training and planning for emergency preparedness and safe transportation of hazardous materials (e.g., Department of Transportation and Federal Emergency Management Agency programs), where requirements and accountability are clearly defined.

Initially, the DOE Working Group reasoned that, with Congressional intent firmly established under Option #3, DOE could design a specific grant instrument with uniform criteria and components that would support all DOE program needs. This systematic approach may be more effective in addressing current funding problems and providing a long-term, fully integrated solution to planning for the expected increase in DOE shipments. However, further discussion among DOE Working Group participants indicated that Congress may be reluctant to include the consolidated grant as a budget line item. Moreover, the Secretary has sufficient authority to direct Program Offices to work together and to implement a target transfer of funds into a single B&R code to support a consolidated transportation grant.

The DOE Working Group recommended that Option #4—a Secretarial directive to implement a target transfer of funds into a single B&R code—be further investigated by the Comptroller.

Additional Working Group Activities Related to Features of a Consolidated Grant

As requested by the Forum, the Working Group discussed the primary issues related to development of a grant that were outlined in the *Strategy Paper* provided to the Forum in October, 1998. The group identified, developed, and discussed background analyses that provide the basis for decisions on key features of the proposed grant. Discussions were conducted in a series of group meetings and telephone conference calls, in addition to individual discussions. Discussions with internal (DOE) and limited discussion with external parties included statutory/legal authority, administrative structure, and grant components (eligibility criteria, funding schedule, allowable activities and expenditures). Equitable treatment for Indian tribes was also a major topic of discussion. Extensive consultation with States and Tribes will be needed on these and other features of the proposed transportation grant.

1. Identification and evaluation of statutory/legal issues

The recommended approach for implementing a consolidated transportation grant would cover all DOE programs that ship non-classified radioactive materials by highway or rail. The DOE Working Group reviewed an analysis of legal requirements, prepared by NTP, that demonstrated that there were no legal impediments to development of a consolidated transportation grant . The analysis:

- ◆ Identified the legal authority for developing a consolidated grant, including applicability of 10CFR Part 600, 31 U.S.C. OMB Circular A-87, and Presidential Memoranda, Executive and DOE Orders related to consultation and coordination with Indian Tribal Governments; and
- ◆ Identified the relationship of the proposed grant to existing statutory requirements for WIPP and OCRWM, including potential legal barriers.

The legal analysis has been subject to review by the Office of General Counsel and other programs; to date, no legal obstacles to implementation of a consolidated transportation grant have been identified.

2. Administrative structure for grant implementation

Two possible administrative structures were considered. These structures are designed to draw on prior experience in managing State programs and to enhance coordination with the existing Transportation Emergency Preparedness Program (TEPP) and with transportation and program staff and contacts. As proposed, the administrative structures would have the following features:

- ◆ For both structures, Headquarters would take the lead in overall program policy, budget advocacy, and guidance.
- ◆ For both structures also, NTP would be responsible for developing consistent policy, coordinating among programs, addressing technical, non-procurement issues and administering the discretionary component of the grant, in coordination with program management.
- ◆ Under proposed administrative structure alternative 1, Field Offices would be responsible for administering agreements with States and Tribes in their respective regions, within guidelines set by NTP in concert with Headquarters and the program clients.
- ◆ Under proposed administrative structure alternative 2, Field Offices would be responsible for administering agreements with Tribes in their respective regions and the Carlsbad Area Office would be responsible for administering agreements with the States through regional groups. Administration would also be performed within guidelines set by NTP in concert with Headquarters and the program clients.
- ◆ In addition, the DOE Working Group members recommended that a peer review group comprised of representatives of States, Tribes, and regional groups examine the merits of proposals prior to the award of any special grants. The regional government groups have agreed that this type of approach has been helpful in administering previous grant programs.

3. Eligibility and funding allocations

The DOE Working Group examined a variety of equitable allocation formulae incorporating risk, legal, and institutional considerations. NTP has prepared a proposed, i.e., strawman formula designed to meet the needs of States and Tribes in relation to the impact of shipments, while also allowing flexibility for special circumstances and providing incentives for program enhancement. The factors to be considered in defining impacts and the weights to be assigned to these factors are particular issues on which State and Tribal input will be sought. The proposed formula includes the following components:

- ◆ A set-aside for Indian Tribes and State regional government groups.
- ◆ A discretionary component to be awarded to any State or Tribe that demonstrates particular need or proposes to implement innovative or particularly valued activities, e.g., development of mutual aid agreements (awards to be decided by a peer group of State and Tribal representatives).
- ◆ For States: A formula grant that includes (1) a “base” component to be provided to all impacted States (i.e., through whose jurisdictions DOE shipments will pass) and (2) an “impact” component based on weighting route miles, population along the routes, and number of shipments.
- ◆ For Tribes: Currently, for demonstration purposes, a formula grant similar to that of the States has been developed. However, Tribes will be consulted on whether they wish to propose an alternative formula that is based on both direct jurisdictional impacts and other constitutionally protected rights.

4. Allowable activities

The DOE Working Group reviewed two summary matrices of allowable activities under a) other related Federal agency programs and b) the proposed DOE transportation grant. Allowable activities under the grant could include: transportation planning related to DOE materials, public information planning, emergency preparedness planning and training, equipment purchase, access to DOE data and tracking systems, coordination with local jurisdictions, participation in DOE technical assistance activities, and training for vehicle inspectors. The group emphasized the importance of clearly defining allowable activities and expected outcomes in the grant application package. An additional benefit of this approach would be avoidance of specifying a cap or a prescriptive listing of allowable expenditures on equipment.

Proposed Schedule for Discussion

The proposed schedule is as follows:

- ◆ August-December 1999: Conduct discussions with DOE Working Group and other stakeholders (e.g., State and Tribal Working Group, National Governors’ Association).
- ◆ January-July, 2000: Conduct on-going discussions with DOE Working Group and TEC/WG Topic Group.

- ◆ July, 2000: Discuss issue paper drafted by Topic Group at Topic Group and TEC/WG meeting
- ◆ September, 2000: Compile TEC/WG comments and revise issue paper
- ◆ October, 2000: Discuss issue paper with DOE Working Group
- ◆ October, 2000: Discuss issue paper with Senior Executive Transportation Forum
- ◆ November, 2000: Issue Draft Notice of Proposed Rulemaking

Outstanding Issues:

- ◆ Because of the Forum's desire to better identify and assess the issues before taking a decision, the proposed allocation formula was not discussed in detail with States and Tribes prior to the July TEC/WG meeting. This has led to some complaints from external parties, and criticism that the Department has not been forthcoming. NTP staff have been working with stakeholders to address and resolve these concerns and is planning for extensive consultation with States and Tribes about all features of the grant.
- ◆ Detailed discussion and review should be given to the recent EPA Federal Register NOPP concerning the agency's proposal to consolidate environmental grants to States and Tribes.
- ◆ Further clarification is required on the eligibility of States that assess hazardous waste fees, and whether awards should be reduced if DOE is paying fees to recipient States.
- ◆ Extensive consultation is required with Tribes on the equity of the proposed formula from the Tribal perspective.

Attachments:

Attachment A: Matrix of Requirements Governing DOE Assistance to States and Tribes.

Attachments B(1) and B(2):

B(1) Proposed Administrative Structure for the Proposed DOE Consolidated Transportation Grant.

B(2) Proposed Alternative Administrative Structure for the Proposed DOE Consolidated Transportation Grant.

Attachment C: Proposed Allocation Formula for the DOE Consolidated Transportation Grant.

Attachment D: Proposed Allowable Activities under the DOE Consolidated Transportation Grant.

Attachment E: Activities Allowed under Related Federal Agency Programs.

Attachment F: Summary of Federal Agency Discussions.